

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF
PHARMACY AND ROY H. EBERHART, II**

Come now Roy H. Eberhart, II ("Licensee" or "Respondent") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a pharmacist will be subject to discipline. Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the Complaint which was filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by

the Board in determining there was cause to discipline his license.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 028133, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo. The parties agree that this Settlement Agreement and any statements contained herein may not be used for or constitute an admission for any purposes other than to settle the disputes between the parties.

JOINT STIPULATION OF FACTS

1. The Missouri Board of Pharmacy ("the Board"), is an agency of the State of Missouri created and established by Section 338.110, RSMo, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo.

2. Respondent, Roy H. Eberhart, II, is licensed by the Missouri Board of Pharmacy as a registered pharmacist, as defined in Section 338.010 RSMo. Respondent's license, numbered 028133, is current and active and was so at all times material herein.

3. Lin-Kris Pharmacy, Inc. does business in Missouri as Eberhart Pharmacy, Permit No. 003766, 4221 Bayless, St. Louis, Missouri.

4. Pharmacy I.V. Associates of St. Louis, Inc. formerly did business in Missouri as Eberhart L.T.C. Pharmacy, Permit No. 5031, 4211 Bayless Avenue, St. Louis, Missouri.

LIN-KRIS PHARMACY, INC. d/b/a EBERHART PHARMACY

5. From approximately April 1, 2000 until November 1, 2003, there were several transfers of controlled substances to and from Eberhart Pharmacy and Eberhart L.T.C. Pharmacy.

6. The records maintained for the transfers failed to list the full name, address and DEA number of the pharmacies involved in these transfers of controlled substances.

7. Respondent's failure to list the full name, address and DEA number of the pharmacies involved in the transfer of the controlled substances is in violation of 19 CSR 30-1.048(4) which states:

(4) A registrant who transfers a controlled substance to or receives a controlled substance from another registrant shall maintain a written record of the transfer which contains the following information: the date of transfer, drug name, strength, dosage form, quantity, name, address and registration number of the transferring registrant and the name, address and registration number of the receiving registrant.

8. Respondent was pharmacist-in-charge of Eberhart Pharmacy from April 1, 2000 until March 10, 2005.

9. As pharmacist-in-charge, Respondent violated and assisted or enabled another person to violate Missouri rules and regulations governing the practice of pharmacy by failing to list the full name, address and DEA number of the pharmacies involved in the transfer of the controlled substances, and by failing to maintain complete and accurate records of controlled substances which were received and/or transferred from another registrant.

10. As pharmacist-in-charge, Respondent should have known that violations of pharmacy laws or rules had occurred.

11. As pharmacist-in-charge, Respondent's failure to comply with all state and federal laws is in violation of 20 CSR 2220-2.090(2) which states in pertinent parts:

(2) The responsibilities of a pharmacist-in-charge, at a minimum, will include:

* * *

(E) Assurance that all procedures of the pharmacy in the handling, dispensing and recordkeeping of controlled substances are in compliance with state and federal laws;

* * *

(N) The pharmacist-in-charge will be responsible for the supervision of all pharmacy personnel, to assure full compliance with the pharmacy laws of Missouri;

* * *

(W) Assure full compliance with all state and federal drug laws and rules.

JOINT CONCLUSIONS OF LAW

12. Cause exists for Petitioner to take disciplinary action against Respondent's license under Section 338.055, RSMo, which states in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent's license shall be placed on PROBATION for a period of three (3) years. The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

A. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employments that requires frequent daily or weekly changes or work locations, he must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

B. Respondent shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

C. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board staff. Said meetings will be at the Board's

discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

E. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.

F. The parties to this Agreement understand that the Board will maintain this Agreement as an open record of the Board as provided in Chapters 338, 610 and 620, RSMo.

G. If, after disciplinary sanctions have been imposed, Respondent ceases to keep his Missouri license current, fails to keep the Board advised of his current place of employment and residence, or begins employment as a pharmacist or technician outside the State of Missouri, such periods shall not be deemed or taken as any part of the time of discipline so imposed. Respondent may petition the Board to seek a waiver for any portion of this requirement by making such a request in written form to the Board for its consideration. No exception will be made to this requirement without prior Board approval.

H. If Respondent leaves the State of Missouri for more than 30 consecutive days, such periods shall not be included as part of the time of discipline so imposed.

I. Respondent shall provide all current and future pharmacy and drug distributor employers and/or pharmacist/manager-in-charges a copy of this disciplinary Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency, he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this Agreement prior to or at the time of any scheduled work assignments.

J. Respondent shall not serve as a pharmacist-in-charge without prior approval of the Board.

K. Respondent shall not serve as a preceptor for interns.

L. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months, beginning six (6) months after this Agreement becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

2. Upon the expiration of said discipline, Respondent's license as a pharmacist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Respondent in a manner consistent with the severity of the violation.

3. No order shall be entered by the Board pursuant to the preceding paragraph of this agreement without notice and an opportunity for a hearing before the Board in accordance with the provisions of Chapter 538, RSMo.

4. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation.

5. The terms of this Settlement Agreement are contractual, legally enforceable, binding and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. Respondent, together with his heirs and assigns, and his attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

7. All discipline in this Settlement Agreement shall run concurrently with any discipline provided for in any settlement agreements approved by the parties for any complaints currently pending before the Administrative Hearing Commission against Lin-Kris Pharmacy, Inc., Roy H. Eberhart, II, and Pharmacy I.V. Associates of St. Louis, Inc.

8. The Board shall file a request for dismissal with prejudice of "Missouri Board of

Pharmacy v. Roy H. Eberhart, II, Case No. 06-0220PH” with the Administrative Hearing Commission within fifteen (15) days of the signing of this Settlement Agreement by the Board.

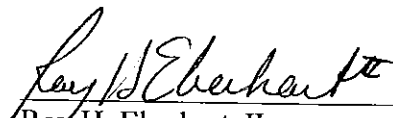
9. Any alleged violations of state and federal drug laws and regulations by Respondent Lin-Kris Pharmacy, Inc. or Roy H. Eberhart, II, for which the Board had notice from the time the complaint was filed by the Board against Respondent until the approval of this Settlement Agreement by the Board, including the matters asserted in Missouri Board of Pharmacy v. Lin-Kris Pharmacy, Inc. d/b/a Cedar Hill Drug, Case No. 06-1237PH, shall not be considered a violation of any term or condition of this Settlement Agreement.

10. Any alleged violation of state and federal drug laws and regulations by Lin-Kris Pharmacy, Inc. during the disciplinary period shall not be considered a violation of any term or condition of this Settlement Agreement.

RESPONDENT

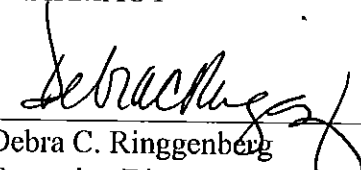
PETITIONER

MISSOURI BOARD OF
PHARMACY



Roy H. Eberhart, II

By:



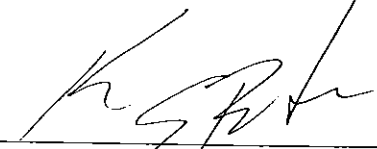
Debra C. Ringgenberg
Executive Director

Date: 01/08/2008

Date: 1-25-08

ARMSTRONG TEASDALE LLP

By:

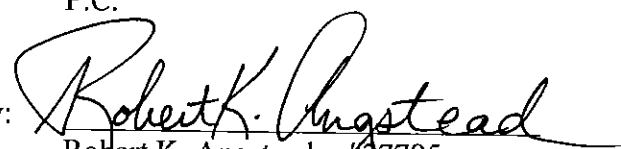


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